United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: May 24, 2002

TO : Elizabeth Kinney, Regional Director

Harvey Roth, Regional Attorney

Gail Moran, Assistant to the Regional Director

Region 13

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Chicago and North East Illinois District

Council of Carpenters

(Custom Roofing Contracting, Ltd.)

Case 13-CC-2368

This Section 8(b)(4)(B) case was submitted for advice as to whether the Union, which had a primary dispute with Custom Roofing (Custom) who was a subcontractor for Custom Roofing Contracting (Contracting), lawfully picketed new subcontractors which Contracting began using instead of Custom. We agree that such picketing violated the Act, as the new subcontractors arranged for by Contracting were not allies of Custom.

Briefly, Custom was one of between 5-8 roofing subcontractors utilized by Contracting. The Union had represented Custom employees until September 2001, when Custom timely terminated the Section 8(f) agreement. Beginning on April 4, 2002, the Union commenced picketing jobsites where Custom was performing work, protesting Custom's past failure to pay fringe benefit contributions. In response, Contracting terminated Custom's subcontract, and began utilizing two other roofing subcontractors, Classic and Power Center. Although Power Center had been founded a year earlier by a former Custom employee, and Classic was created by a distant relative of Contracting's owner, and while both entities hired former Custom employees to perform similar work, there is no evidence of any financial interest between Custom and the two new subcontractors, nor of any control over or ownership of the two new subcontractors by either Contracting or Custom. Neither Classic nor Power Center purchased any assets from Custom. The Union began picketing jobsites where Classic and Power Center were performing work for Contracting on April 17, and has continued that picketing to date.

We agree with the Region that neither Classic nor Power Center is an ally of Custom under either a "struck work" theory or a "single integrated operation" theory, which could privilege the Union's picketing under Section 8(b)(4)(B). It was Custom's customer, Contracting, which made the decision to terminate Custom's subcontract and instead subcontract with Classic and Power Center. Such arrangements, which neither are arranged by the primary nor benefit the primary, do not create an ally situation. 1 Also the Board has found picketing a neutral department store and its new lessee flower department operator, which replaced a struck primary flower department operator, to be a violation of the Act since there was no evidence that the department store's arrangement with the new lessee was arranged by or benefitted the struck predecessor lessee.2 Therefore, we agree that neither Contracting, Classic, nor Power Center were performing struck work, and they remained insulated from lawful picketing by the Union in its dispute with Custom.

We further agree that there is insufficient evidence on which to conclude that either Classic or Power Center are part of a "single integrated operation" with Custom where there is no evidence of common ownership, common management, common control of labor relations, nor interrelationship of operations. Even though there are some marginal links between Contracting and both Classic and Power Center, those links between neutrals do not show a single integrated relationship between the primary Custom and the neutrals. 4

¹ See, e.g., <u>Teamsters Local 776 (Pennsy Supply)</u>, 313 NLRB 1148, n. 2 and case cited therein (1994) (violation for union to picket neutral employer which was using its own employees to perform work previously performed by employees supplied by its labor supply provider, which was a struck primary).

Misc. Drivers and Helpers Local 610 (Target/Flowers by Priscilla), 227 NLRB 806, 808 (1977). See also Local 379, IBW (Catalano Bros., Inc.), 175 NLRB 459, 459-60 (1969) (where primary contract carrier of manufacturer was struck, neither manufacturer nor new contract carrier which manufacturer then utilized were performing struck work).

³ Compare, e.g., <u>Mine Workers (Boich Mining Co.)</u>, 301 NLRB 872, 873-75 (1991), enf. denied 995 F.2d 431 (6th Cir. 1992).

⁴ See generally Misc. Drivers and Helpers Local 610 (Target/Flowers by Priscilla), 227 NLRB at 808 (financial arrangements made by a mutual friend of primary and succeeding lessee, speed of department store's arrangement with new lessee, and lack of written contract between department store and new lessee are "suspicions" but not evidence; no ally relationship found).

Accordingly, we agree that the Region should issue a Section 8(b)(4)(B) complaint, absent settlement, and [FOIA Exemptions 2 and 5 $\,$

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B.J.K.